

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5195 OF 1989

with

SPECIAL CIVIL APPLICATION NO.5196 OF 1989

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

AMITBHAI VIPINCHANDRA BHAGATWALA
VERSUS
THE STATE OF GUJARAT & ANR.

Appearance: (In both SCAs)
MS KJ BRAHMBHATT for petitioner
None present for respondents

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 12/06/2000

#. The petitioner of special civil application No.5195 of 1989 is the son of petitioner in special civil application No.5196 of 1989. The petitioners were granted stamp vendor licences. The licence of petitioner of special civil application No.5195 of 1989 bears No.3/86 and the licence of petitioner of special civil application No.5196 of 1989 bears No.3/85. The licences aforesaid of both the petitioners came to be revoked under the order of respondent No.2 dated 5.6.89. Hence these special civil applications.

#. Ms.K.J.Brahmbhatt, learned counsel for petitioners raised twofold contentions. Firstly, it is contended that the irregularities on which the licences of the petitioners came to be revoked were of the period earlier to the period 20th May 1989 and the same stood washed off as their licences have been renewed upto 31st March 1990. In her submission, in case these illegalities and irregularities were there the respondent No.2 was competent to revoke these licences but once their licences were renewed at subsequent stage despite of these irregularities, the same cannot be revoked. It has next been contended that the irregularities which have been made basis for revocation of licences of the petitioners are of very minor nature and on which this severe action of revocation of licences does not call for. It is submitted that the petitioners are mother and son and the father of the petitioner in one petition and husband of the petitioner in other petition is also having stamp vendor licence. These type of irregularities can possibly be there but the same could not have been made ground for revocation of both the licences. She has apprehended that possibility of revocation of these two licences may be on the ground that in one family three licences have been granted. Second contention is raised that deduction of 10% of the amount of the costs of unutilized stamps by respondents is wholly arbitrary and unjustified. Validity has also been challenged of Rule 24 of the Stamp Rules. In both these special civil applications, it is contended that this provision which provides for deduction of 10% of the total value of stamps retained by petitioners is penal and it goes beyond the rule making powers conferred by respondent No.1. In her submission, the respondent No.1 cannot frame any rule under Section 70 of the Act under which penalty exceeding Rs.500/= is imposed.

#. Nobody is present on behalf of respondents to oppose these special civil applicaitons. Not only this, the

respondents have even not cared to file reply to the special civil applications.

#. Having given my thoughtful consideration to the contentions made by learned counsel for the petitioners I do not find any merits therein.

#. The learned counsel for the petitioners has failed to show any provisions from the relevant Act or Rules framed thereunder which provides that in case licence is renewed by the competent authority, it is debarred from revoking the same on the basis of irregularities which were committed by the licensee during the period prior to the date on which the licences were renewed. Not only this, she has failed to show any decision of the apex court or of this court or any other High Court in support of her this contention. This matter was adjourned on two or three times to afford her opportunity to study the matter on this point but she is unable to either point out any provision from the Act or Rules or decision in support of her this contention. In such matters, where the licensee has to deal with public at large, this theory of washing off of the irregularities etc. committed by licensee during the period prior to the renewal of licence or its renewal cannot be made applicable. It is true that in service matters, this washing off theory has been made applicable in the case of promotions or some other minor service benefits. Earlier, this washing off theory was also made applicable to the cases of compulsory retirement of the officers/ employees of the State Government. Later on on consideration, the Hon'ble Supreme Court has laid down law that all the adversities in service record of the officers/ employees have to be considered while considering his case for compulsory retirement, though he would have been in the meanwhile promoted or permitted to cross efficiency bar etc. So the cases of promotion and compulsory retirement were not taken at par. The crux of the matter is that whether in such a serious matter, to continue a licensee to carry on his/her business of sale of stamps these irregularities committed can be taken for revocation of the licence irrespective of the fact that despite of the presence of the same, the licence has been renewed? If what the learned counsel for the petitioners contends is accepted, then possibility of corruption, manipulation, favoritism, etc. in these matters cannot be overruled. People will manipulate things with connivance of employees and officers of the Departments. At the time of considering the application of licensee for renewal of licence these matters may not be brought to the notice of the competent authority and in ignorance of the same possibility of

renewal of licences cannot be overruled. Otherwise also, this abstract doctrine of washing off adversities, in this case, irregularities, cannot be applied for the reason that in case despite knowing of these irregularities or having notice of the same where the authorities renew licence, the case may be different but here it is not the case of the petitioners that the authority conferred with power to renew licence of the petitioners was aware of these irregularities and despite of the same, he has renewed the licence. This contention raised by learned counsel for the petitioners is devoid of any substance.

#. If we go by irregularities which have been committed by both these licences, these are very serious in nature and rightly on the basis of the same, the only order which could have been is for revocation of licences of the petitioners. It is really shocking that the petitioners are not maintaining sale registers in the prescribed form. The petitioners have not mentioned full names and addresses of those persons to whom the stamps were sold in the stamp register. It is requirement of rule 14 of the Gujarat Stamp Supply and Sales Rules, 1987. This irregularity is certainly very relevant and it is to be taken seriously and it has correctly been taken to be serious. Non mentioning of names and addresses of the persons to whom stamps have been sold in the stamp register makes it convenient for the persons to misuse these stamps. It is not unknown that in back dates, stamps are being sold. If we go by facts of the case as revealed from the order passed by the authority below, it is clearly borne out that these two petitioners were really licensees in paper and possibly they would not have been doing this work also. In fact, Vipinchandra Bhagatwala, the father of one petitioner and husband of another petitioner is under these licences, selling the stamps. In both the cases, the authorities noticed that in the sale register of these two licences, the entries in paragraph-3 have been made by Vipinchandra Bhagatwala. He is holding licence No.3/77 for selling stamps in the civil court. So this person was, in fact, using all these licences and these two petitioners were only Benami licensees. Not only this, it is also found as a fact that on comparison of the sale register of these three licensees it is found that the stamps were sold on one day to one individual from the same place. This sale has been made of stamps to one person on the same day at the same place and in the same handwriting entries were made which goes to show that it is in fact one person who is utilizing all these three licences. It is true that there may not be any bar to grant stamp

vendor licences to the other family members of the family where the head of the family is having stamp vendor licence. But where it is found that these licences are being misused or in fact, Mr. Vipinchandra Bhagatwala is the person who is doing all this business under these three licences this may be a good ground for revocation thereof. It is in fact, under these three licences one person is working. It is also the case that on 16th May 1989, the son sold stamps from the sale register of his father and his licence. It is found as a fact that these two petitioners were signing blank stamps in advance, i.e. to make it convenient for the father and husband to sell the stamps. If that is the position, I fail to see what for these three licences have been granted to the members of one family. In the country large scale unemployment is there and in case concentration of licences is made in the hands of one family then naturally not only it will be detrimental to the unemployed persons but also it will give rise to manifold irregularities which may be committed by the licensee and that what it has been done in the present case. It is not in the larger interest of the public. Every irregularity committed by the licensee which is minor in nature may not be a ground for revocation of the licence but it is a case where irregularities are of serious nature and made in breach of rules and in substance, it is a case where one person is doing business under three licences, the revocation of licences of these two petitioners is certainly not only legal and justified, but in the larger interest of the wholesome unemployment prevailing in the country, i.e. in the larger public interest.

#. Challenge to Rule 24 though has been made in the body of this special civil application, but if we go by the prayer clause, the petitioners have nowhere prayed for declaration of the same to be ultra vires of the Act or Constitution. In the absence of any such prayer made in the special civil application, this court cannot go on and examine the validity of this provision. In the absence of such prayer, this relief cannot be granted even if this court is satisfied that this provision is ultra vires of the Act. Otherwise also, if we go by the provisions of Rule 24, I find sufficient justification in this provision where this reasonable percentage of cost of unused stamp can be deducted. This is not a penal what it is contended by learned counsel for the petitioner. This deduction is made only in the case where licence vendor has resigned or his licence has been revoked or on his application for leave to return any stamp in his possession. The department has to bear out

heavy expenses of administration and this is not a matter where strictly speaking it can be termed to be a penalty.

#. In the result, these special civil applications fail and the same are dismissed. Rule discharged. Interim relief, if any, granted earlier stand vacated. As nobody has put appearance for respondents, no order as to costs.

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(sunil)